

REMARKS/ARGUMENTS

In response to the Office Action of Feb. 07, 2006, Applicant request re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

Claim Status/Support for Amendments

Claims 1-23 remain pending in this application. Claims 1-18, 20-23 are withdrawn in response to a restriction requirement. Claim 19 has been amended herein.

No new matter has been added via the amendments to the claim made herein.

Claim 19 adds an additional feature from the embodiment of the artificial implant disclosed in the specification at page 20, penultimate paragraph; Fig. 11.

No new matter has been added via the amendments to the specification made herein.

In the specification, the paragraphs beginning at page 20 and 31 have been amended to correct minor editorial problems as suggested by the Examiner. Moreover, the paragraph at page 31 was amended to remove a typographical error noticed by Applicant.

Restriction/Election of Species

Claims 1-18, 20-23 have been withdrawn from consideration on the merits as being directed to a non-elected invention. Applicant

hereby confirms election of invention V, species D (i.e., claim 19). It is understood that claims 1-18 and 20-23 will remain pending, albeit withdrawn from consideration on the merits at this time. In view of the Examiner's restriction requirement, Applicant retains the right to present claims 1-18 and 20-23 in a divisional application.

Objections to the Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs (#80', # 89') mentioned in the description.

At page 20, the disclosure has been amended to clearly indicate that the superior body 80' in Fig. 10 is formed similar to the superior body 80 (Fig. 8) and includes a spindle 82' with a circular enlargement 86 on the end. Support for this amendment can be found in Fig. 10.

The Examiner has indicated that Reference no. "89" (circumferential groove) is denoted as "89'" in the drawings. Applicant cannot find reference "89'" in any of the Figures or specification; "89" is disclosed at page 20, penultimate paragraph, and Figure 11. Should this Objection be maintained by

the Examiner, Applicant hereby requests clarification.

Rejections under 35 USC 102

Claim 19, as originally presented, stands rejected under 35 USC 102(e) [sic] as allegedly being anticipated by Bryan et al., (U.S. Patent 6,949,105).

First, Applicant notes that claim 19 is rejected under 35 USC 102(e) over Bryan et al., (USP 6,949,105). Applicant respectfully submits that this is an error on the Examiner's part. Applicant contends that a proper rejection of original claim 19 would have been under 35 USC 102(b) as being anticipated by the printed publication Bryan et al., (U.S. PG Pub. 2002/0161446), as the date of publication (Oct. 31, 2002), not the '105 patent, was more than one year prior to the date of the instant application (Jan. 23, 2004). Applicant hereby requests clarification of the rejection.

The Examiner asserts that Bryan et al., disclose a surgical kit for disk arthroplasty comprising instruments and an artificial implant, the instruments being a sizing instrument (Fig. 4; ref. #18), a distractor (Fig. 19; ref. #140) and a cutting block (Fig. 32B; ref. #300) and an artificial implant having a mobile bearing (col. 61, line 55- end; col. 62, lines 1-9).

Applicant respectfully disagrees with the Examiner's assertion. However, in the interest of compact and efficient prosecution, Applicant has amended claim 19 to specifically recite an artificial implant including, *inter alia*, a superior body for attachment to a superior vertebral surface and an inferior body for attachment to an inferior vertebral surface. The inferior body having a peripheral wall with a peripheral ring formed thereon, a mobile bearing capable of being placed between the superior and inferior body wherein a surface of the mobile bearing is complementary to a surface of said superior body and a surface of the inferior body. The mobile bearing surface includes a circumferential groove constructed and arranged to receive the peripheral ring to secure the bearing to the inferior body.

Support for these amendments can be found throughout the specification as originally filed, see for example, page 20, lines 11-20; Fig. 11.

This is in direct contrast to the Bryan et al., reference which fails to teach or suggest the use an inferior body having a peripheral wall with a peripheral ring formed thereon and a mobile bearing capable of being placed between the superior and inferior body; the mobile bearing surface includes a circumferential groove

constructed and arranged to receive the peripheral ring of the inferior body to secure the bearing to the inferior body.

Claim 19, as originally presented, stands rejected under 35 USC 102(b) [sic] as allegedly being anticipated by Bryan et al., (U.S. PG Pub. 2003/0135277).

First, Applicant notes that claim 19 is rejected under 35 USC 102(b) over Bryan et al., (U.S. PG Pub. 2003/0135277). Applicant respectfully submits that a proper rejection of original claim 19 would have been under 35 USC 102(e) as being anticipated by the printed publication Bryan et al., (U.S. PG Pub. 2003/0135277) published Jul. 17, 2003 which is less than one year prior to the filing date of the instant application (Jan. 23, 2004). Applicant again hereby requests clarification of this rejection.

The Examiner asserts that Bryan et al., disclose a surgical kit for disk arthroplasty comprising instruments and an artificial implant, the instruments being a sizing instrument (Fig. 19B; ref. #142), a distractor (Fig. 27; ref. #320) and a cutting block (Fig. 37; ref. #390) and an artificial implant having a mobile bearing (page 2, paragraph [0014]).

Applicant respectfully disagrees with the Examiner's

assertion.

The Bryan et al., reference (U.S. PG Pub. 2003/0135277) fails to teach or suggest the use an inferior body having a peripheral wall with a peripheral ring formed thereon and a mobile bearing capable of being placed between the superior and inferior body; the mobile bearing surface includes a circumferential groove constructed and arranged to receive the peripheral ring of the inferior body to secure the bearing to the inferior body, as currently recited in the claim.

Claim 19, as originally presented, stands rejected under 35 USC 102(e) as allegedly being anticipated by Ferree (U.S. PG Pub. 2004/0073311).

The Examiner contends that Ferree discloses a surgical kit for disk arthroplasty comprising instruments and an artificial implant, the instruments being a sizing instrument (page 4, paragraph [0076], a distractor (page 4, paragraph [0078], and a cutting block (page 4, paragraph [0080], and an artificial implant having a mobile bearing (Fig. 13).

While the Ferree reference does disclose two end plates for attachment to the superior and inferior vertebral surfaces with a

recess designed to receive a centralized rod (mobile bearing), wherein either side of the rod can include a polymer extension block (see Fig. 11A), the Ferree reference fails to teach or suggest the use an inferior body having a peripheral wall with a peripheral ring formed thereon, wherein the mobile bearing surface includes a circumferential groove constructed and arranged to receive the peripheral ring of the inferior body to secure the bearing to the inferior body, as currently required in the claim.

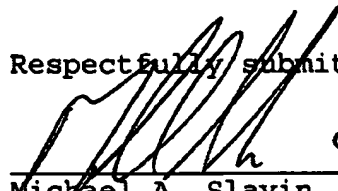
It is well established that in order for a claim to be anticipated, each and every element as set forth in the claim must be found, either expressly or inherently described in a single prior art reference (see MPEP 2131).

Thus, considering the differences in the artificial implants taught by Bryan et al., ('105, '277), Ferree and the instant claim, as delineated above, each an every element of the rejected claim cannot be found either expressly or inherently in the aforementioned references, therefore, withdrawal of the instant rejections is respectfully solicited.

SUMMARY

In light of the foregoing remarks and amendment to the claim, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,


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